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No. 1016

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

CHARLES W. JAMIESON,

Appellant,

vs.

MARION B. FOLSOM now ANTHONY J. CELEBREEZE SECRETARY OF HEALTH, EDUCATION and WELFARE,

Appellee.

On Appeal from the United States Court of Appeals Seventh Circuit

Reply Brief

CHARLES W. JAMIESON
105 W. Madison Street
Suite 1706
Chicago 2, Illinois
Attorney for Appellant
Attorney pro se.

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Despite the fact that the Secretary's answer was not timely, appellant feels forced to comment on the offering of the Solicitor General.

Statements as to the gist of the Memorandum and Order in case No. 58 C 725 found in 170 F. Supp. 858 (862) is incorrect in detail, apparently again attempting to persuade this Honorable Court that the above memorandum and order of March 11, 1959 was a final, appealable decree when,

in fact, it was an interlocutory, unappealable order and still pending; in that light may the attention of this Honorable Court be called to Rule 54(b) of the Federal Rules of Civil Procedure for United States District Courts. Sec. 77 of the Illinois Civil Practice Act limits the right of review to final orders, judgments and decrees and Illinois law governs in this case in this trial court in Illinois.

Rehearing is unlawful in Illinois; it calls for a new suit creating a multiplicity of suits instead of settlement all in and through one case.

The case in question is not unlike *Kerner* v. *Flemming*, 283 F. 2d 916 (917). The United States Court of Appeals said that the trial court erred in dismissing complaint; that the trial court should have ordered additional evidence to be taken before the Secretary; there was no call for rehearing as suggested by the Court of Appeals, which is unlawful in Illinois and therefore no new trial was in order just an adherence to the dictates of Sec. 404.512(b) of Regulations in Title 42 of the U. S. Code.

As in this case, the United States Court of Appeals termed the trial court's behavior a Janus-faced act of unconsciously reversing himself whereas, in the case at bar the United States Court of Appeals supported the trial court without apparent reluctance.

The non-feasance upon the part of the Secretary involved Sec. 404.512(b), of Regulations under Title 42 of the Code, as amended January 24, 1954. The figures and calculations as to claimant's pay were contrary to the said Sec. 404.512(b) under date of January 24, 1954, based upon gross instead of net or "take home" pay. If calculations had followed the dictates of said Sec. 404.512(b) no violation of the Code upon the part of the claimant would have been indicated; if claimant had been permitted to prove forgery of his endorsement on benefit checks, there would have been no occasion for this suit.

This is the crux of the case at bar.

Mr. Laird Bell, whom Mr. Justice Goldberg doubtlessly knows well, a prominent lawyer in Chicago and Washington, a former president of the American Bar Assn. and former Chairman of the Judiciary Committee had this to say in the American Bar Journal: Only on rare occasions can an individual get a decision by administrative officer or an administrative agency against government as said administrative officers and administrative agencies are forever mindful of whence their pay checks come. A like comment was made in the Yale Law Journal.

Good cause shown should be determined by the courts rather than the Secretary where self-interest might be indicated.

In this case the burden of proof is upon the Secretary that he has complied with the requirements of Sec. 404.512(b) of Title 42 of the Code extant at the time of the offense in question.

Before and after claimant had instituted suit the Secretary tried repeatedly to settle for less than the demands made by the appellant. This fact and the repeated breach of the Code has been ignored by the trial court and the United States Court of Appeals.

Doubtlessly the staff of the Solicitor General is not aware of the fact that the "further hearing" ordered by the trial court was just that, pursuant to a reconsideration upon the part of the trial court after a second and complete report was rendered by the Secretary. This second report was never made complete as the calculations objected to were never revamped.

The case at bar is not new on this subject. This same situation occurred before wherein the Secretary based his figures and calculations on claimant's gross rather than net or "take home" pay and the trial court supported the Secretary in this and, the United States Court of Appeals backed the trial court only to have an alert Supreme Court of the United States reverse and remand sending the case back with directions to revamp figures in accordance with Sec. 404.512(b) of Title 42 of the United States thereby freeing claimant of petty charges.

Respectfully submitted,

CHARLES W. JAMIESON,
An attorney (pro se).

May 23, 1963